

ADMINISTRATIVE RECORD

United States
Environmental Protection
Agency

Region 8, Montana Office
Federal Building
301 S. Park, Drawer 10096
Helena, Montana 59626-0096


1768990 - R8 SDMS

MAR 18 1991

Ref: 8MO

**NOTICE LETTER FOR CONDUCT OF AN EE/CA FOR THE PRIORITY SOILS
OPERABLE UNIT
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
REGISTERED MAIL**

Mr. Arthur Zaegel
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102

Re: Priority Soils Operable Unit Expedited Response Action
(ERA); Silver Bow Creek/Butte Area Superfund Site

Dear Mr. Zaegel:

NOTICE OF POTENTIAL LIABILITY

This letter follows a general notice letter that was issued to you, in connection with the above referenced Superfund Site. As the listed contact person for the potentially responsible party (PRP) identified above, this letter has been sent to your attention.

This letter serves two basic functions. First, this letter notifies you that a 60-day period of formal negotiations with the Environmental Protection Agency (EPA) automatically begins with the receipt of this letter, and explains why EPA is not invoking the negotiations period described in Section 122(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9622(e), for this action. Second, this letter provides general and site specific information to assist you in these negotiations.

As indicated in the general notice letter previously sent regarding the site, EPA has information indicating that you may be a PRP as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Priority Soils Operable Unit. With this letter, EPA encourages you to voluntarily negotiate a consent order in which you agree to perform the response activities identified below.

In accordance with CERCLA, EPA already has undertaken certain actions and incurred certain costs in response to conditions at the site. These response actions include the conduct of studies

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and sampling events for the site; and a decision to proceed with an ERA pursuant to EPA's removal authorities on the Priority Soils Operable Unit. That action will hereinafter be referred to as the Priority Soils ERA. The first step in that process is the conduct of an Engineering Evaluation/Cost Analysis (EE/CA) for the Priority Soils Operable Unit.

NOTICE OF INTENT TO ENTER INTO ABBREVIATED NEGOTIATIONS

EPA has determined that use of the full Section 122(e) special notice procedures is not appropriate for this action, for the following reasons: 1) field action needs to begin on this project as early as possible to remove contaminated soils from residential yards in Butte and Walkerville, Montana which EPA believes may be a potential health threat to the residents; 2) previous negotiations and agreements between EPA and the PRPs is likely to provide the basis for more expedited and abbreviated negotiations in this matter.

EPA believes that a consent agreement in the form of an Administrative Order on Consent will best serve the interests of reduced litigation and timely response action. Therefore, receipt of this letter triggers a 60-day negotiations for performance of the Priority Soils EE/CA. If a good faith offer is submitted by the PRPs within 30 days, another 30 days are automatically provided for completion of negotiations.

If EPA determines that a good faith offer has not been submitted in the first 30 days of the negotiations period, EPA may terminate the negotiations period. During this 60-day period, you are invited to participate in formal negotiations with EPA. You are encouraged to voluntarily negotiate a settlement providing for the PRP to conduct the response activities required at the site. The 60-day negotiations period ends sixty days after you receipt of this letter. The settlement will be embodied in a consent order for performance of the Priority Soils EE/CA.

FUTURE RESPONSE ACTION

EPA plans to conduct, at a minimum, the following additional response activities at the Priority Soils Operable Unit of the Silver Bow Creek/Butte Area Superfund Site. Selection of a expedited response action for the Priority Soils Operable Unit, based on the EE/CA study and implementation of the action, and further evaluation of the entire Priority Soils Operable Unit for selection of final remedies pursuant to an RI/FS and documented by a Record of Decision. EPA also plans additional response activities at all other operable units of the site.

DRAFT CONSENT ORDER

A copy of EPA's draft administrative order and draft work plan is attached. This is provided to assist you in developing a response to this letter, and for conducting the Priority Soils EE/CA. This work plan will also be part of the negotiations. A final work plan must be attached to the final order on consent.

ADMINISTRATIVE RECORD

Pursuant to Section 113(k) of CERCLA, EPA has provided substantial information of the site to the PRPs, and has prepared an initial, draft version of an administrative record for the Silver Bow Creek/Butte Area Superfund Site, including an administrative record for the Priority Soils ERA. This administrative record will be open to the public for inspection in EPA offices in Helena, Montana, in the near future.

PRP RESPONSE AND EPA CONTACT PERSON

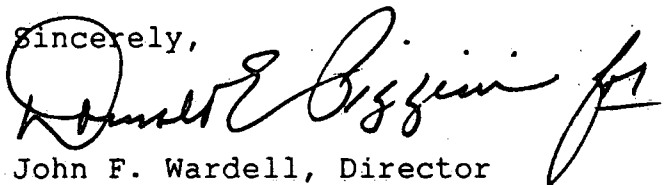
You have five calendar days from this notice to notify EPA in writing of your willingness to negotiate the performance of the Priority Soils EE/CA. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response activities, and that you have declined any involvement in performing the activities. You may be held liable by EPA under Section 107 of CERCLA for the cost of the cleanup activities EPA performs at the site.

Your response to this notice letter should be sent to:

U.S. Environmental Protection Agency
Region 8, Montana Office
Sara Weinstock, Remedial Project Manager
301 South Park
Federal Building, Drawer 10096
Helena, Montana 59626-0096

If you or your attorney have any questions pertaining to this matter, please direct them to Joseph Santarella, (303) 294-7553, the EPA attorney assigned to this action.

Sincerely,



John F. Wardell, Director
Montana Office

enclosures

cc: Joe Santarella, 8ORC wo/encl
Sara Weinstock, 8MO wo/encl
Jim Scott, MDHES wo/encl
Bill Kirley, MDHES wo/encl
C. F. George, ARCO wo/encl
Susan Oja, ARCO wo/encl
Tom Malloy, New Butte Mining, Inc. wo/encl
Frank C. Crowley Esq., New Butte Mining, Inc. wo/encl
Frank A. Crowley, Montana Mining Properties, Inc. wo/encl
Rob Jordon, Montana Mining Properties, Inc. wo/encl
W.D. Murray, Esq., Montana Mining Properties, Inc. wo/encl
J.W. Greene, Montana Western Railway Company, Inc. wo/encl
Leo Berry, Montana Western Railway Company, Inc. wo/encl
William F. Boyd, Universal Royal Apex Limited wo/encl
John Craig, Montana Department of Commerce wo/encl
Ann Brodsky Esq., Montana Department of Commerce wo/encl
William T. McCarthy, RARUS Railroad wo/encl
Rick Griffith, Butte Historic Parks Railroad wo/encl
Ann Blythe, Burlington Northern Railroad w/encl
Leo Berry, Burlington Northern Railroad w/encl
William T. McCarthy, BGM Equipment Co., Inc. wo/encl
Dennis Washington wo/encl
Ray Tilman, MRI wo/encl
Becky Sommerville, MRI wo/encl

Concurrence

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Bill Kirley, MDHES wo/encl
C. F. George, ARCO wo/encl
Susan Oja, ARCO wo/encl
Tom Malloy, New Butte Mining, Inc. wo/encl
Frank C. Crowley Esq., New Butte Mining, Inc. wo/encl
Frank A. Crowley, Montana Mining Properties, Inc. wo/encl
Rob Jordon, Montana Mining Properties, Inc. wo/encl
W.D. Murray, Esq., Montana Mining Properties, Inc. wo/encl
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Leo Berry, Burlington Northern Railroad w/encl
William T. McCarthy, BGM Equipment Co., Inc. wo/encl
Dennis Washington wo/encl
Ray Tilman, MRI wo/encl
Becky Sommerville, MRI wo/encl

FCD:March 12, 1991:SARA/MULTIPLE

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece next to the article number.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Arthur Zaigel
Burlington Northern Railroad Co.
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102

4a. Article Number

4b. Service Type

- ☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

MAR 25 1991

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, October 1990

☆U.S. GPO: 1990-273-861

DOMESTIC RETURN RECEIPT

P 369 468 586

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

☆U.S.G.P.O. 1989-234-555

PS Form 3800, June 1985

Sent to	
Mr. Arthur Zaigel	
Street and No.	
777 main Street	
P.O., State and ZIP Code	
Fortworth, TX 76102	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	